

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SPEARMAN CORPORATION
MARYSVILLE DIVISION and SPEARMAN
CORPORATION KENT DIVISION,

Plaintiffs,

v.

THE BOEING COMPANY,

Defendant.

Case No. C20-13RSM

ORDER DENYING MOTION FOR
RECONSIDERATION

This case comes before the Court on Plaintiffs Spearman Corporation and Spearman Corporation Kent Division (“Spearman”)’s Motion for Reconsideration, Dkt. #191. Spearman seeks partial reconsideration of the Court’s Order granting in part Defendant Boeing’s Motion for Summary Judgment, Dkt. #190. The Court has requested and received a response brief from Boeing. Dkt. #193.

“Motions for reconsideration are disfavored.” LCR 7(h)(1). “The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.” *Id.* “The motion shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the court, any new matters being brought to the court’s attention for the first time, and the particular modifications being sought in the court’s prior ruling.” LCR 7(h)(2).

1 Spearman seeks reconsideration of this Court’s “rulings that (1) Spearman’s small
2 number of late deliveries were material breaches justifying termination of \$50 million in
3 contracts as a matter of law; and (2) the GTA’s incorporation of 48 C.F.R. § 52.249-2 limits
4 Boeing’s liability for breach of the duty of good faith and fair dealing.” Dkt. #191 at 1.

5 Spearman first argues that the Court improperly weighed an issue of fact by determining
6 that its late deliveries constituted material breaches of the contracts at issue. *Id.* at 2. Spearman
7 cites to *Colorado Structures, Inc. v. Ins. Co. of the W.*, 161 Wn.2d 577, 589, 167 P.3d 1125
8 (2007) for the proposition that “slight” or “insubstantial” breaches of a contract are partial—not
9 material—breaches insufficient to excuse the aggrieved party’s own performance. *Id.*
10 Spearman acknowledges the Court’s finding that these breaches were not “slight” or
11 “insubstantial” and that they clearly harmed Boeing, but argues that this question should have
12 gone to the jury.

13 The Court has interpreted the contracts to permit cancellation “for any event of default.”
14 Spearman disputes hundreds of breaches alleged by Boeing; factual disputes over a breach of
15 contract almost always go to the jury. However, in this case, Spearman has clearly conceded
16 responsibility for at least 28 late deliveries. *See* Dkt. #190 at 11. Spearman essentially
17 concedes this via deposition, and it appears undeniable to the Court, even if Spearman’s
18 representative was not able to state with certainty which parts were delivered late. The fact that
19 Boeing accepts a certain rate of late deliveries from other suppliers does not legally affect its
20 rights under the contracts to cancel with Spearman. Given the undisputed facts of the case, this
21 question did not need to go to jury and the Court’s ruling was not error. Any allegation that
22 Boeing operated without good faith properly remains under Spearman’s other cause of action.
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1 Spearman next contends the Court overlooked authority contrary to its ruling that
 2 “Spearman’s available recovery for the cancellation of the orders and contract is limited by the
 3 GTA to that allowed under 48 C.F.R. § 52.249-2, subsections (d)-(g).” Dkt. #190 at 4.
 4 Spearman cites cases finding that “the federal government itself loses the benefit of the
 5 limitations in 48 C.F.R. § 52.249-2 when a supply contract is terminated in bad faith.” *Id.*
 6 (citing *TigerSwan, Inc. v. United States*, 110 Fed. Cl. 336, 345 (2013); *Torncello v. United*
 7 *States*, 681 F.2d 756, 758 (Fed. Ct. Cl. 1982); *JKB Sols. & Servs., LLC v. United States*, 18
 8 F.4th 704, 709 (Fed. Cir. 2021)). Spearman asks the Court to reconsider its reliance on *Myers v.*
 9 *State*, 152 Wn. App. 823, 218 P.3d 241 (2009) and *SAK & Assocs., Inc. v. Ferguson Const.,*
 10 *Inc.*, 189 Wn. App. 405, 357 P.3d 671(2015), Washington cases where private companies were
 11 able to keep the limitations in 48 C.F.R. § 52.249-2 even when bad faith was alleged.
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 14 The federal authority cited by Spearman is inapposite and does not render the Court’s
 15 ruling manifest error. Spearman’s cases are not directly on point given that they relate to
 16 contracts with the Federal Government, and they do not overrule *Myers* or *SAK*. The Court has
 17 already considered *Scott v. Cingular Wireless*, 160 Wn.2d 843, 854, 161 P.3d 1000 (2007) and
 18 finds that Spearman makes no new arguments about this case. Washington law allows parties to
 19 contract for this limitation, and the Court will enforce it.
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21 Spearman sets forth no other valid basis for reconsideration. Having reviewed the
 22 relevant briefing and the remainder of the record, the Court hereby finds and ORDERS that
 23 Spearman’s Motion for Reconsideration, Dkt. #191, is DENIED.
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25 DATED this 22nd day of August, 2022.

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27 RICARDO S. MARTINEZ
 28 CHIEF UNITED STATES DISTRICT JUDGE